



*Department of Planning, Building and Code Enforcement*

STEPHEN M. HAASE, AICP, DIRECTOR

**PUBLIC NOTICE  
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION  
CITY OF SAN JOSÉ, CALIFORNIA**

***Project File Number, Description, and Location***

PDC03-034, Planned Development Rezoning from Unincorporated County to A(PD) Planned Development Zoning District and subsequent permits to allow the construction of up to 92 single-family attached residences on a 3.4 gross acre site located at the southwest corner of North Capitol Avenue and Baton Rouge Drive. (Anita Messina, Owner, Trumark Developer). Council District: 4

California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location **does not** contain a listed toxic site.

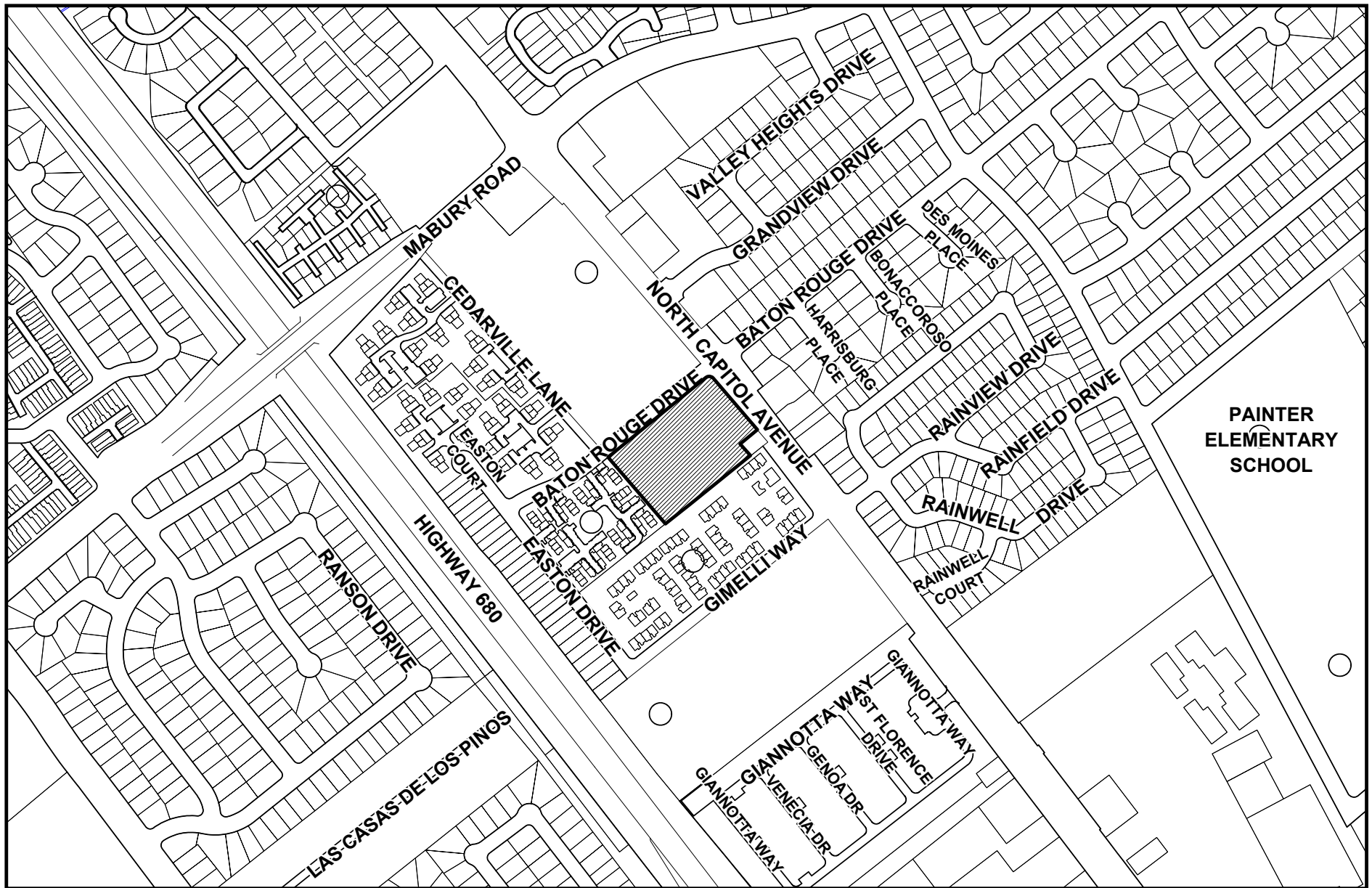
Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on **August 25, 2003**, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **August 5, 2003** and ends on **August 25, 2003**.

A public hearing on the project described above is tentatively scheduled for **August 27, 2003 at 6:00 p.m.** in the City of San Jose Council Chambers, 801 N. First Street, San Jose, CA 95110. The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Berryessa Branch Library 3311 Noble Avenue, San José, CA 95110 San Jose, and online at [www.ci.san-jose.ca.us/planning/sjplan/eir/mnd2003.htm](http://www.ci.san-jose.ca.us/planning/sjplan/eir/mnd2003.htm). Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call **Caleb Gretton** at (408) 277-4576.

Stephen M. Haase, AICP  
Director, Planning, Building and Code Enforcement

Circulated on: August 5, 2003

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Deputy



Scale: 1"=500'

**File No: PDC03-034**

**District: 04**

**Quad No: 52**

Created on 04/23/03

**DRAFT  
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** Baton Rouge Rezoning

**PROJECT FILE NUMBER:** PDC03-034

**PROJECT DESCRIPTION:** Planned Development Rezoning and subsequent permits from Unincorporated County to A(PD) Planned Development Zoning District to allow the construction of up to 92 single-family attached residences on a 3.4 gross acre site.

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** Southwest corner of North Capitol Avenue and Baton Rouge Drive; 25406039

**COUNCIL DISTRICT:** 4

**NAME OF APPLICANT:** Trumark Companies

**MAILING ADDRESS AND PHONE NO. OF APPLICANT CONTACT PERSON:**

Chris Davenport

4185 Blackhawk Plaza Circle, #200 Danville, CA 94506

**FINDING**

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

**MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

1. Aesthetics

- A. Substantial trees and landscaping shall be included in the project.

- B. Downward-directed lights with low elevation standards in the parking areas and downward-directed streetlights along the public and private streets shall be provided in order to prevent off-site glare.
- C. Public streets that are impacted by project construction activities shall be swept and washed down daily.
- D. Debris, rubbish and trash shall be cleared from any areas on-site that are visible from a public street.

2. Air Quality

- A. A construction Air Quality Plan shall be developed and implemented for dust control to include dust suppression practices such as: 1) frequent watering; 2) damp sweeping of haul routes, parking and staging areas; 3) installation of sandbags or other erosion control measures to prevent silt runoff to public roadways; 4) vehicle speed controls; 5) watering or the use soil stabilizers on haul routes, parking and staging areas; 6) prohibition of grading during high winds; 7) hydroseeding areas where grading is completed or inactive; 8) covering of stockpiles and loads in haul vehicles; 9) maintaining at least two feet of freeboard in all haul vehicles; 10) limiting the area being graded at a given time; 11) monitoring of particulate levels; and 12) enforcement measures.

3. Biological Resources

- A. A pre-construction survey for burrowing owls shall be conducted by a qualified ornithologist within 30 days prior to site grading.
- B. A construction-free buffer zone to be determined by the ornithologist shall be established around any active owl nests.
- C. No construction activities that would that would result in disturbance to nesting burrowing owls shall occur.
- D. If any burrowing owls are discovered using the site during the pre-construction surveys during the non-breeding season, a burrowing owl relocation plan to be approved by the California Department of Fish and Game shall be developed and implemented, including passive measures such as installation of one-way doors in active burrows for up to four days, careful excavation of all active burrows in the construction area to prevent owls from using them.

4. Cultural Resources

- A. Pursuant to Section 7050.5 of the health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California: In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified by the developer and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the landowner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further disturbance.
- B. Should evidence of prehistoric cultural resources be discovered during construction, work in the immediate area shall be stopped to allow adequate time for evaluation and mitigation, and a qualified professional archaeologist called in to make an evaluation; the materials shall be

evaluated; and if significant, a mitigation program including collection and analysis of the materials prior to the resumption of grading, preparation of a report and curation of the materials at a recognized storage facility shall be developed and implemented under the direction of the Director of Planning, Building and Code Enforcement.

5. Geology and Soils

- A. The project shall be designed and constructed to ensure structural stability as required by the earthquake design regulations of the Uniform Building Code.
- B. A City approved erosion control plan shall be developed and implemented with such measures as: 1) the timing of grading activities during dry months, if feasible; 2) temporary and permanent planting of exposed soil; 3) temporary check dams; 4) temporary sediment basins and traps and/or temporary silt fences.

6. Water Quality

- A. A notice of Intent and a Storm Water Pollution Prevention Plan that addresses both construction and post-construction periods and specifies erosion and sediment control measures, waste disposal controls, maintenance responsibilities and non-stormwater management controls, shall be submitted to the RWQCB to comply with stormwater discharge requirements of the NPDES General Permit.
- B. Buildings shall be designed so that the finished floor is elevated above the projected FEMA flood level.
- C. A Storm Water Pollution Prevention Plan (SWPPP) in compliance with local NPDES permit shall be developed and implemented including: 1) site description; 2) erosion and sediment controls; 3) waste disposal; 4) implementation of approved local plans; 5) proposed post-construction controls; including description of local post-construction erosion and sediment control requirements; 6) Best Management Practices (BMPs) such as the use of infiltration of runoff onsite, first flush diversion, flow attenuation by the use of open vegetated swales and natural depressions, stormwater retention or detention structures, oil/water separators, porous pavement, or a combination of these practices for both construction and post-construction period water quality impacts; and 7) non-storm water management.

7. Noise Quality

- A. Mechanical ventilation shall be provided in accordance with the Uniform Building Code requirements when windows are to be closed for noise control.
- B. Solid railings shall be constructed at all porches and/or decks to the satisfaction of the Director of Planning, Building and Code Enforcement.
- C. Windows and sliding glass doors shall be maintained closed and STC 30 or higher rated windows and doors shall be installed at all living spaces facing North Capitol Avenue.
- D. Windows and sliding glass doors shall be maintained closed and STC 28 or higher rated windows shall be installed at all living spaces facing Baton Rouge Drive.
- E. Windows and sliding glass doors shall be maintained closed and windows and glass doors with STC ratings 3 points higher than those indicated above shall be installed at all corner rooms facing either North Capitol Avenue or Baton Rouge Drive.
- F. Windows and sliding glass doors shall be maintained closed at all other living spaces within the site.
- G. Measures, including equipment selection, location, and/or enclosures, to mitigate project-generated mechanical noise to 55dB DNL at the property line shall be determined to the

satisfaction of the Director of Planning, Building and Code Enforcement at the PD Permit stage.

- H. Construction operations shall be scheduled for daytime hours of 7:00 a.m. to 7:00 p.m. Monday through Friday so as to avoid the more sensitive evenings, nighttime and weekend hours.

## **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **August 25, 2003**, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$50 filing fee. The written protest should make a "fair argument" based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Stephen M. Haase, AICP  
Director, Planning, Building and Code Enforcement

Circulated on: August 5, 2003

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Deputy

Adopted on: \_\_\_\_\_

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Deputy

## PUBLIC HEARING NOTICE

The Planning Commission and the City Council of the City of San José will consider a change in **Zoning** at a public hearing in accordance with Title 20 of the San José Municipal Code on:

**Planning Commission Hearing**  
**Wednesday, August 27, 2003**

**6:00 p.m.**

**City Council Chambers, Room 205**  
**City Hall**  
**801 North First Street**  
**San Jose, CA 95110**

**City Council Hearing**  
**Tuesday, September 16, 2003**

**7:00 p.m.**

**City Council Chambers, Room 205**  
**City Hall**  
**801 North First Street**  
**San Jose, CA 95110**

The project being considered is:

**PDC03-034. Planned Development Prezoning from County to A(PD) Planned Development Zoning District to allow up to 92 single family attached residences on a 3.4 gross acre site, located at/on the southwest corner of North Capitol Avenue and Baton Rouge Drive (Anita Messina, Trustee Of The Messina 1989, Owner; Trumark Companies Chris Davenport, Developer). Council District 4. SNI: None. CEQA: Mitigated Negative Declaration.**

Reports, drawings, and documents for this project are on file and available for review, and a permit with recommendations will be available for your review during the week of the public hearing from **9:00 a.m. to 5:00 p.m.**, Monday, Wednesday, Fridays, and from **10:00 a.m. to 5:00 p.m.** Tuesday and Thursdays at:

Department of Planning, Building and Code Enforcement  
801 North First Street, Room 400  
San José, CA 95110  
(408) 277-4576  
[www.ci-san-jose.ca.us/planning/sjplan/](http://www.ci-san-jose.ca.us/planning/sjplan/)

You are welcome to attend and to speak on this issue. To arrange an accommodation under the Americans with Disabilities Act to participate in this meeting, please call (408) 277-4576 (Voice) at least 48 hours before the meeting.

*\* If you choose to challenge this land use decision in court, you may be limited to only those issues you, or someone else, raised and discussed at the public hearing or in written correspondence delivered to the City at or prior to the public hearing.*

Comments and questions are welcome and should be referred to the **Project Manager, Caleb Gretton**, at the e-mail address: [caleb.gretton@ci.sj.ca.us](mailto:caleb.gretton@ci.sj.ca.us) in the Department of Planning, Building and Code Enforcement. Please refer to the above file number for further information on this project.



Joseph Horwedel,  
Deputy Director, Plan Implementation Division  
Dated: **July 21, 2003**

Patricia L. O'Hearn,  
City Clerk

Noticing Radius: **1000 ft**

SECTION 20.120.400 OF THE SAN JOSE MUNICIPAL CODE  
ESTABLISHES A FORMAT PROTEST PROCEDURE FOR REZONINGS  
AND PREZONINGS BEFORE THE CITY COUNCIL

If you are the owner of property to be rezoned, or if you own property adjacent to or across the street from a proposed rezoning or prezoning, you may file an Official Protest.

Such protest must be made on a form provided by the Director of Planning and must be filed in the Department of Planning, Building and Code Enforcement **by 5:00 p.m.** on the fifth day before the City Council opens its public hearing on the proposal (that is, the Thursday before a Tuesday hearing). A separate protest petition shall be filed for each separate protesting site. Contact the Department of Planning, Building and Code Enforcement if you have any questions.